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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/677,848	10/02/2003	Neal M. Lonky	NEALL.001C1	5129

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EXAMINER	
HAND, MELANIE JO	

ART UNIT	PAPER NUMBER
3761	

NOTIFICATION DATE	DELIVERY MODE
07/23/2008	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	**Application No.** 10/677,848	**Applicant(s)** LONKY, NEAL M.	
	Examiner MELANIE J. HAND	**Art Unit** 3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *30 April 2008*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1 and 3-7* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1,3-7* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on April 30, 2008 has been entered.

Response to Arguments

2. Applicant's arguments with respect to claim 1 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 6 and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by Deutchman et al (U.S. Patent No. 5,395,379).

With respect to **claim 1:** Deutchman teaches a method of removing blood from an active bleeding site, namely a birth canal of a female patient, in a bodily tissue, namely the vagina. The method comprises the step of positioning the opening of a vacuum cup 22 over said active bleeding site inasmuch as the cup is placed over a fetus' head which is located in the active bleeding site (Fig. 1, Col. 4, lines 35-38). The method also comprises the step of applying a vacuum to the interior cavity of said cup 22 and maintaining said vacuum until the cessation of uterine contractions. (Col. 1, lines 64,65, Col. 4, lines 56-64) Examiner’s position is based upon the fact that blood flow is arrested or slowed upon cessation of these contractions and the cessation of movement of the baby through the vagina, which is also when Deutchman teaches the vacuum is removed. The method also comprises the step of releasing the vacuum in cup 22 upon slowing or arresting the flow of blood. Examiner’s position regarding the coincidence of cessation of uterine contraction and baby movement and the slowing or arresting of the flow of blood is stated *supra*. (Col. 5, lines 2,3) As the cup 22 is held to the baby's head in the bleeding site solely by the vacuum pressure, upon releasing the vacuum, the cup 22 is necessarily automatically removed from said bleeding site where the baby is still at least partially located after releasing the vacuum.

With regard to the limitation “a method of slowing or arresting the flow of blood from an active bleeding site in a bodily tissue”, because Deutchman teaches that blood commonly enters the vacuum cup (Col. 1, lines 64,65), the blood must necessarily be drawn from said bodily tissue, i.e. the vagina. Since claim 1 does not explicitly recite how blood is arrested or slowed, the claim is given its broadest reasonable interpretation. By teaching the step of maintaining vacuum until the flow of blood has arrested or slowed due to uterine contraction cessation, it is examiner's position that Deutchman teaches a method of slowing or arresting the flow of blood from an active bleeding site in a bodily tissue.

With respect to **claim 6:** The vacuum is released when the flow has slowed due to cessation of uterine contraction and movement of the baby. The bleeding site can be further treated, e.g. with medication (Col. 6, lines 65-68), by attaching a hollow needle after the cup has been detached, once the baby is removed from the active bleeding site, i.e. the birthing canal in the vaginal tissue.

With respect to **claim 7:** The vacuum is released immediately as taught by Deutchman once the flow has arrested or slowed inasmuch as blood flow is considered herein to be the result of movement of the baby through the birthing canal due to uterine contraction. Deutchman teaches that the vacuum is immediately released once uterine contraction has ceased. (Col. 5, lines 2,3) Thus the vacuum, released upon cessation of uterine contraction, is released immediately once flow of blood has arrested or slowed.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.

3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

4. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Deutchman ('379).

With respect to **claim 3:** Deutchman teaches an active bleeding site in a bodily tissue but does not teach that the active bleeding site is a wound, a rupture or a laceration. However, the method of Deutchman can be performed on any of these sites (Col. 3, lines 27-36, Col. 6, lines 35-38) and still accomplish the identical result of slowing or arresting blood flow since the method meets all of the remaining limitations of claim 3. Therefore, it would be obvious to one of ordinary skill in the art to modify the method of Deutchman such that the active bleeding site is a wound, rupture or laceration with a reasonable expectation of success to arrest or slow the flow of blood at the active bleeding site.

5. Claims 4 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Deutchman ('379) in view of Hulse et al (U.S. Patent No. 5,935,136).

With respect to **claim 4:** Deutchman teaches that cup 22 is flexible (Col. 5, lines 33-36) but does not teach that the cup is formed of rubber, plastic, silastic, silicone, or metal. Hulse teaches a transparent plastic vacuum cup extractor made of polyethylene, which is a thermoplastic material for use in a method of delivering a baby that is substantially identical to the method of Deutchman and thus also fully capable of being performed with the result of slowing or arresting blood flow at an active bleeding site, wherein the bleeding site is identical to that taught by Deutchman. ('136, Abstract, Col. 3, lines 8-17, 41-43) Hulse teaches that the transparent cup allows examination by the obstetrician of the condition of the fetal scalp during delivery (‘136, Abstract). Therefore it would be obvious to one of ordinary skill in the art to modify the method of Deutchman such that the flexible vacuum cup is formed of transparent polyethylene as taught by Hulse so as to allow monitoring of the fetal scalp during delivery. The method of the combined teaching of Deutchman and Hulse thus renders the limitation "the vacuum cup is formed of a material selected from the group consisting of rubber, plastic, silastic, silicone and metal" obvious.

With respect to **claim 5:** Deutchman teaches that the cup 22 is flexible but does not teach that the vacuum cup is formed of transparent polyethylene material. Hulse teaches a vacuum cup formed of transparent polyethylene, which is also flexible. (‘136, Abstract, Col. 3, lines 8-17, 41-43) The motivation to modify the method of Deutchman such that the vacuum cup is formed of transparent polyethylene is stated *supra* with respect to claim 4.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MELANIE J. HAND whose telephone number is (571)272-6464. The examiner can normally be reached on Mon-Thurs 8:00-5:30, alternate Fridays 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner’s supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Melanie J Hand/
Examiner, Art Unit 3761